DOCUMENT RESUME

ED 075 084 PS 006 419

AUTHOR	Hunt, Roberta
TITLE	Obstacles to Interstate Adoption.
INSTITUTION	Child Welfare League of America, Inc., New York, N.Y.
SPONS AGENCY	Children's Bureau (DHEW), Washington, D.C.
PUB DATE	Aug 72
NOTE	54p.
AVAILABLE FROM	Child Welfare League of America, Inc., 67 Irving Place, New York, New York 10003 ($1.50)
EDRS PRICE	MF-$0.65 HC Not Available from EDRS.
DESCRIPTORS	*Administrative Policy; Adopted Children; *Adoption; Court Litigation; *Interstate Programs; *Legal Problems; National Organizations; *State Laws; Technical Reports

ABSTRACT

A documentation of the obstacles in law, policy and administrative procedure that interfere with effecting adoptions across State lines is presented. Major problems include: (1) Nonjudicial termination or relinquishment proceedings, although legal in many States, do not satisfy the courts in other states on the issue of the child's freedom for adoption; (2) Local orientation of laws restrict right to consent to adoption to executives of local agencies; and (3) Diversity in State adoption laws on the question of when a decree may be granted causes delay and confusion when States that have differing provisions are involved. It is concluded that action taken to overcome the confusion in interstate adoption proceedings must come from the American Public Welfare Association, the Adoption Resource Exchange of North America, the Child Welfare League of America, or the Office of Child Development. (Author/CK)

U. S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

ED 075084

OBSTACLES TO INTERSTATE ADOPTION

Roberta Hunt

PS 00419

Research Center
Child Welfare League of America, Inc.

FILMED FROM BEST AVAILABLE COPY

ED 075084

U. S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

OBSTACLES TO INTERSTATE ADOPTION

Roberta Hunt

Report of a Study Funded by the Children's Bureau, Office of Child Development, U. S. Department of Health, Education and Welfare

Child Welfare League of America, Inc.
67 Irving Place
New York, N. Y. 10003

PS 006419

August 1972

$1.50
A-36

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL BY MICROFICHE ONLY HAS BEEN GRANTED BY

Child Welfare League of America, Inc.

TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE U.S. OFFICE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER.

Copyright 1972 by the Child Welfare League of America, Inc. All rights reserved. No part of this book may be reproduced in any form by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing by the publisher, except by a reviewer, who may quote brief passages in review.

ISBN Number: 0-87868-100-0

CONTENTS

		Page
I.	Introduction	1
II.	General Observations	6
III.	Major Areas of Difficulty	9
	Differences Between States on Law or Policy	9
	Interstate Placement Guarantees	17
	Difficulties Related to Financing	19
	Other Administrative and Procedural Problems	21
	Casework Practice or Quality of Practice	22
IV.	Toward Solution of Some of the Problems in Interstate Adoption	23
	Strengthening Child Welfare Services in General	23
	Additional Steps to Deal With Diversity and Local Autonomy	24
	Agreement on a Universally Acceptable and Legally Unassailable Procedure for Termination of Parental Rights	25
	Agreement on the Concept of the Continuing Authority of the Guardian in the Sending State	26
	Agreement on Division of Responsibility for Financing	27
	Agreement on Waiting Period Before the Final Decree of Adoption	28
	Agreement on Provisions of the Revised Uniform Adoption Act	28
V.	Summary and Conclusions	29
VI.	Appendix	33

I. INTRODUCTION

BACKGROUND

Children who wait for permanent homes have long been a concern of the Child Welfare League of America. Over the years the League has launched a number of projects designed to further and speed the goal of assuring permanent homes for children whose parents are unable to care for them. One such effort was establishment of the Adoption Resource Exchange of North America (ARENA), designed to bring together the waiting children and the waiting families of this continent. This plan for bringing together would-be adoptive parents from one part of the continent to meet the needs of children awaiting adoption from another part of the continent grew out of the success of an earlier League project in which it was demonstrated that Indian children, vainly awaiting adoption in their respective states, could find waiting parents among adoptive applicants in states far from the reservation.

In establishing ARENA, the League envisioned gains in addition to finding homes for waiting children. A review of the original proposal[1] indicates that the ARENA operation was seen also as a way to help raise the level of adoption practice for all children. It was seen as a mechanism that would broaden the perspective of agencies through their contacts with other agencies. A desirable standardization of practices and procedures was anticipated. It was also envisioned that one function of ARENA would be to identify legal barriers that block or hinder interstate placement and to work toward eliminating them.

These two direct service operations involving the movement of children across state and even national boundaries made the League even more keenly aware of the variations in state administrative policies and procedures affecting adoptions and of the diversity in the legislative provisions of the different states. In the ARENA experience it was confirmed that the laws and procedures of one state are in many instances incompatible with the laws and procedures of another. Trying to fulfill the respective requirements of two states caused complex entanglements. These entanglements at worst could block an otherwise sound and desirable placement and at best could be infinitely costly in terms of worker effort, adoptive parent anxiety and loss of precious time and opportunity for waiting children. Even when the transfer of a child to an out-of-state home had finally been

---

[1] A Proposal of the Child Welfare League of America to Establish a National Resource Exchange, New York: Child Welfare League of America, 1966.

effected, questions of continuing jurisdiction and division of responsibilities persisted, often thwarting and disrupting efforts to finalize the adoption and to carry out constructive preplacement arrangements that had been arrived at in good faith.

The ARENA experience in attempting to effect interstate adoptions in spite of the complexities involved in accommodating to divergent laws and policies suggested the need for a systematic examination of the problems and of possible steps toward their more lasting resolution.

The Children's Bureau, now in the Office of Child Development, United States Department of Health, Education and Welfare, shared the League's concern over variations in laws, policies and practices that appeared to be impeding interstate placement for adoption. In 1971, it granted funds to the League for a project designed to identify the specific legal and policy provisions and practices that constitute common impediments and to suggest from the study findings where efforts to achieve modifications could best be focused.

STUDY METHODOLOGY

Questionnaire

The major source of data from which conclusions are drawn was the response to a memorandum and questionnaire sent to the state departments of social services in the 50 states and the District of Columbia. (See Appendix I, October 1, 1971, Memorandum to State Directors of Social Services for Children on Laws and Policies Affecting Interstate Adoption, and Appendix II, Questionnaire--Impediments to Interstate Adoptions.) A similar memorandum and the same questionnaire were sent to 80 local voluntary and public agencies selected with the help of ARENA staff to assure representation from every state and inclusion of agencies that had made the heaviest use of ARENA or were known to have experienced problems in working out arrangements with another state (see Appendix III, October 4, 1971, Memorandum to Executives of Agencies That Have Used ARENA).

A letter was sent, also, to the welfare administrator in each of the 10 Canadian provinces. It read in part:

> "Although the focus (of this project) is primarily on problems which may arise from conflicts and variations in law and policy from state to state rather than across international boundaries, we think the Canadian agencies' experiences in trying to work out arrangements for adoption placements with a number of different states could be particularly helpful to us.
>
> "We need your help in identifying specific problems that have arisen so that we may analyze the laws and manuals of procedure of the particular state with those in mind. Will you please ask your staff to recall their experiences in placing children for adoption in the United States during the past several years and to tell us about

instances where a legal or policy requirement of a particular state appeared to cause unwarranted delay or to be different from or incompatible with the policies or laws of other states or of your own province? Do the problems as you see them appear to be around questions of continuing jurisdiction? Termination of parental rights? Financial responsibility--long term--as well as immediate costs--as for transportation? Transfer of custody? Administrative structure? Casework judgment or practice? Other?

"Please be as specific as possible, because it is around actual case situations that legal or policy issues and problems and need for change can be made most clear."

Responses were received from all but five of the 50 state departments; from 47 of the 80 local agencies; and from five of the 10 Canadian provinces.

Case Reading

ARENA files were reviewed on 80 case situations. They were drawn primarily from the states that had been the heaviest users of ARENA or that had been perceived as "problem" states by respondents. Also reviewed were an additional 12 files of specific case situations reported by the respondents or by ARENA staff as illustrative of problems encountered in arrangements between states.

Reading of Excerpts From Laws and State Manuals

The Child Welfare League library has systematically gathered policy manuals and excerpts from laws concerning adoption and related matters from each of the states. The file is more comprehensive for some states than for others, but includes fairly current material from every state. This was read. The memorandum to each state department described the most recent publications available in the League library and asked to have the material updated or augmented wherever indicated. The response to this request was good.

Review of Other Pertinent Material Available in the League Library

To our knowledge, no research has been done previously on the problems involved in interstate movement of children for purposes of adoption. The Reports of Regional Conferences of 1947, 1948 and 1951[1], conducted jointly by state agencies and the United States Children's Bureau, attest to the long-term nature of the problems involved in interstate placement and set forth some of the principles that have been agreed upon for the guidance of the states.

---

[1]Federal Security Agency, Social Security Administration, United States Children's Bureau, unpublished material, 1947, 1948, 1951.

Also available for study was the painstaking summary--state by state--of the provisions of the adoption laws done for ARENA in 1968 by Judge William Neville, a member of the ARENA Advisory Board and of the Child Welfare League Board of Directors.

Library reading and perusal of administrative files included review of other available pamphlets, articles and correspondence related to interstate placement, to adoption law and procedure, or to the closely related laws and procedures governing custody and foster care of children, termination of parental rights, control of child placement and licensing of child placement agencies. This included study of the provisions of the Interstate Compact on the Placement of Children[1], the Revised Uniform Adoption Act[2] and the so-called "Model Adoption Act."[3]

Consultation With ARENA Staff and Other CWLA Staff

Informal Conferences With Executives and Practitioners

During the course of the study, opportunities were utilized for informal discussion of interstate placement problems.

LIMITATIONS IN THE DATA

As already indicated, the major source of data influencing study conclusions was the response to the questionnaire. By its very nature it brought second-hand or hearsay evidence of the legal provisions or practices in another state that in the judgment of the respondent, posed problems for the reporting state. Striking were the variations in the descriptions of the requirements of one given state by the several states reporting on the same state. What was seen as a problem to one respondent was not mentioned by another state or by another agency within the same state and vice versa. What was cited as a strength in one's own state law was perceived as an obstacle to movement by another. Legal and policy provisions of the respondents' state or the state described did not always seem to be accurate when checked against excerpts from law or policy.

---

[1] Interstate Compact on the Placement of Children, the Council of State Governments, 1960.

[2] Revised Uniform Adoption Act, drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association at Atlanta, Ga. in 1970 and New Orleans, La. in 1972. (Available without charge from the National Conference of Commissioners on Uniform State Laws, 1155 E. 60th St., Chicago, Ill. 60637.)

[3] Legislative Guides to Termination of Parental Rights and Responsibilities and the Adoption of Children, U.S. Department of Health, Education and Welfare, Children's Bureau, Washington, D.C., 1961.

Recommendations for needed change suggested that most respondents viewed the problem narrowly or parochially and usually only in relation to the specifics of an individual case situation. One respondent stated frankly that it was impossible to make generalizations about the nature of the problems in interstate adoptions, since no two cases were the same. All problems could be worked out eventually, she believed, but it took a great deal of time. There was wide variation in depth and precision of responses, limiting meaningful analysis.

II. GENERAL OBSERVATIONS

Despite the imprecision and the diversity of the responses, some general conclusions emerged:

1. The law in many states is wholly silent in relation to adoption involving the rights and responsibilities of more than one state. Laws and procedures precisely designed to safeguard all the parties concerned in a local or within-state adoption work awkwardly toward the same result when a second, also locally oriented state, comes into the picture.

2. Movement of children across state lines for purposes of adoption occurs under four distinctly different kinds of circumstances. Legal and administrative machinery in most states is not designed to facilitate such movement under any of these four circumstances, but nonetheless this machinery is brought to bear uniformly and inexorably on all four.

   a. There is the "ARENA-type" matching effort between an authorized agency with a child in one state and an authorized agency with a family wanting to adopt in another state.

   b. There is the "moving family" situation wherein a family with whom a child has been placed for adoption by an authorized agency changes its place of residence to another state before the adoption has taken place.

   c. There is the "independent placement" arrangement wherein a family from one state learns of the availability of a child in another state and seeks to effect an adoption.

   d. There is the "direct placement" wherein an authorized agency in one state recruits an adoptive home resource in a neighboring state and places a child in the home.

   Laws and practices fairly well designed to "block" or slow up undesirable independent placements, for example, work inadvertently to "block" or needlessly delay ARENA-type placements. Laws and procedures that make sense when applied to placement between neighboring states make less sense when two widely separated states are involved, and vice versa.

3. The number of children involved in adoption across state lines has never been reliably reported, and this study did not produce a basis for a realistic estimate. It appears, however, that placements arranged through ARENA are but a small part of the total. Respondents seemed in agreement that the number is increasing and will continue to increase for several reasons. Deepening commitment of agencies and of adoptive parents' groups to finding homes for older children and children with special needs will demand combing of home resources in all parts of the country. There is increasing mobility of young families, including families with whom agencies have placed children. Increasing scarcity of white infants in the care of authorized agencies may increase the appeal of nonagency sources for families that can afford to travel and to pay high legal fees and obstetrical care costs.

4. Despite the sizable number of placements in the aggregate, and the fact that all respondents reported some experience with adoption involving more than one state, few if any appeared to have had a wide enough experience to be fully knowledgeable about all aspects of the problem. Although it was recognized by a few as a formidable undertaking, some respondents suggested that a compilation of pertinent laws of all states be developed, kept up-to-date, and made readily available throughout the continent for ready reference. Even if this suggestion could be implemented, it would not fully remove the barrier of diversity of law. It is unrealistic to expect an individual who deals with only an occasional interstate adoption to become conversant with the multiplicity of state laws and policies that are germane to the problem, even if an up-to-date compilation of state laws were available for reference.

5. In most states, responsibility for working out individual interstate placement problems appeared to be assigned to staff below the level that can most easily exert influence on legislative or other high-level policy change.

6. Relatively few respondents even mentioned the Interstate Compact on the Placement of Children.[1] One respondent from a state that is a member of the Compact reported that some agencies in Compact member states seem unaware that their state is a member.[2] Since the Compact is the only instrument yet devised to deal with at least some of the problems cited by respondents, it seems clear that it must become more widely known and understood. Its potentialities must be fully explored.

---

[1] Interstate Compact on the Placement of Children, Chicago: Council of State Governments, 1960.

[2] State members of the Compact are: Connecticut, Delaware, Iowa, Kentucky Louisiana, Maine, Massachusetts, New Hampshire, New York, North Carolina, North Dakota, Rhode Island, Vermont, Washington and Wyoming.

7. Uniformity in adoption laws was the most frequently recommended solution to interstate adoption problems. There was far less agreement on desirable provisions for a uniform law.

8. Although differences in the provisions of the adoption law from state to state were mentioned frequently as a major source of difficulty, the examples given of problems encountered were more often related to other parts of the states' legal and administrative provisions. These include provisions relating to control of child placements; to custody and guardianship of children; to termination of parental rights, including but not limited to, the right to consent to an adoption; and regulation of standards of agency practice through state licensing. Also pertinent were the state laws setting up the administrative structure and the assignment and division of responsibility for assuring protection of children. Inadequate funding to staff, operate and coordinate this nationwide network of provisions for child care and protection is perhaps the most pertinent problem of all.

9. There is no legally mandated authority and agreed-upon procedure--binding upon all the states--to safeguard as well as facilitate all movement of children across state lines for purposes of adoption. To put it more bluntly, NO ONE IS IN CHARGE!

III. MAJOR AREAS OF DIFFICULTY

All states appear to share the same goal--that every adoption be both socially desirable and legally incontestable. They strive to achieve this goal in varying and sometimes conflicting ways. The following are the major areas of difficulty:

DIFFERENCES BETWEEN STATES ON LAW OR POLICY

Valid Consent

A first question to be answered before an adoption may be considered in any state is whether the child is legally free, as shown by documentary evidence that a valid consent to his adoption is at hand. It is around this issue that much of the confusion and incompatibility occurs between states. What is seen as the most desirable way to effect a relinquishment of a natural parent's right and responsibility to consent to an adoption varies from state to state and even within individual states. Courts in most states question procedures for freeing a child for adoption that differ from what is accepted as valid within their own jurisdictions.

The United States Children's Bureau has long supported the position that a judicial termination of all parental rights is the only really sound way to safeguard the interests of all parties concerned.[1] It has maintained that only with a judicial termination, i.e., with a court hearing, is there a complete divestment of all legal rights, privileges, duties and obligations of the parent and child with respect to each other. With such judicial relinquishment, guardianship is then transferred from the parent to an agency or person whose responsibilities include the right to consent to adoption. With nonjudicial relinquishment, i.e., without a court hearing, various reciprocal rights, privileges, duties and obligations can remain unclear. The Child Welfare League of America shares this view, but it also provides in its Guidelines for Adoption Service (1971) and in its Standards for Adoption Service (1968) (Section 7.26) for accommodation to the opposing

---

[1] Legislative Guides for the Termination of Parents' Rights and Responsibilities and the Adoption of Children, United States Children's Bureau, 1961. (Reaffirmed in the statement, "Termination of Parental Rights and the Adoption of Children," August 1971.)

view that a legally sanctioned "relinquishment",[1] even if nonjudicial, is acceptable if properly safeguarded:

> "Termination of parental rights and relationships involves and alters basic human and property rights. The full protection of those rights ideally requires court approval. The legal presumptions against fraud and duress created by court approval make judicial procedures clearly superior in principle.
>
> "Some states have statutory procedures which permit the relinquishment without court approval, of a child by its parent or parents to a public welfare department or licensed child-placing agency. In these states such a relinquishment is deemed, in the absence of fraud or duress, to terminate the parental right and to establish a legal relationship between the child and the department or agency sufficient to give exclusive power to the department or agency to consent to a later adoption of the child. This nonjudicial procedure has worked successfully in many of the states in which it is authorized, and has certain practical advantages over a formal court-approved relinquishment which may entail either delay in placement of the child or recurrence of emotional conflicts in the parent who has come to the decision to relinquish the child.
>
> "Statutory provision for relinquishment of children to authorized social agencies presupposes that necessary protections are assured by the services offered by such agencies; by casework which gives the parents every opportunity to consider alternatives and to reach a decision that is right for them or in the best interests of the child; and by acceptance of the relinquishments only when parents are ready to give up their rights (as well as their responsibilities) forever, and to recognize that this is a final decision.
>
> "Agencies acting under these statutory procedures and without the protection afforded by court approval should, however, be fully aware that the adoption procedures may be attacked by the natural parent or parents for alleged fraud or duress in the procurement of the relinquishment,

---

[1]The terms "surrender," "release" and "relinquishment" have essentially the same meaning in relation to law and represent instruments of voluntary giving up of parental rights. The term "relinquishment" is used by choice in the CWLA standards, since the definition of "relinquish" is "to renounce claim to." These terms in relation to adoption should not be confused with "consent." "Consent" means voluntary agreement to or concurrence in some act or purpose. The term "consent" in relation to child adoption is a written statement in which the person or agency, having the legal right to act, consents to a specific proposed adoption and is fully aware of the contents of the document, including the names of the adopting parents.

unless such attack is barred by the statute of limitations; and, even when it is unfounded, such attack may seriously damage the adoption process."[1]

The CWLA Standards (Section 7.26) go on to condemn the use of informal relinquishment procedures, "blank" consents by the natural parents,

"or any other procedure which has the result of postponing the time of permanent termination of parental rights until actual entry of the adoption decree."

California is one of the states that persuasively defends its nonjudicial approach to freeing a child for adoption. A respondent from California contends that a neutral social agency staffed with skilled caseworkers offers the best possible setting to enable the natural parent to come to a sound decision with which the parent can be comfortable. (The respondent believes, however, that the nonjudicial "surrender" procedures of some other states may not be so sound. Once the relinquishment has been filed with the State Department of Social Welfare, California courts have ruled, the natural mother's consent to finalization of the adoption is no longer needed, since she has given her right to consent to the agency and the agency in turn is authorized to give its consent to the adoption. California points out that under its law the mother's relinquishment of right to consent cannot be revoked, as the respondent believes might be true of a surrender in some other states.)

Some states challenge California's nonjudicially determined right to give consent. If, for example, a California family moved to Florida with a child placed with them by a California agency, Florida courts would not accept the validity of the consent. As in Pennsylvania and some other states, Florida courts hold (at least in respect to nonresident children) that unless parental rights have been terminated by court order, they have not been terminated. To complete the adoption of the California child in Florida or Pennsylvania, natural parents would have to be involved and their consent to the adoption obtained. This might not be possible, or might not be socially desirable, for many reasons. One alternative might be for the family to travel back to its former state and attempt to adopt the child there. This is a costly and time-consuming possibility. In some instances it would not even be possible if the former state permitted only residents of the state to file petitions for adoption, for the family that had moved to another state would no longer be resident.

A variation on the interstate obstacles just described would be encountered if a Maine family sought to adopt a child relinquished for adoption in California. Relinquishment without a court hearing is acceptable in Maine but only if relinquishment has taken place before a probate judge, a safeguard required by Maine law.

---

[1] CWLA Standards for Adoption Service. New York: Child Welfare League of America, 1968, pp. 79, 80.

Many respondents saw resolution of this question of differences between state provisions for termination of parental rights as one of reciprocity or acceptance by one state of what is a legal provision in another state. Wisconsin, however, reports that, although its law specifically authorized such acceptance, there are still difficult problems. The Wisconsin law quoted reads:

> "In the case of a guardian having the authority to consent or file its recommendations under an instrument other than a court order valid under the laws of another state, that instrument shall serve as evidence of the authority to consent or file its recommendation."

Despite this provision encouraging acceptance of judicial provisions and official acts of other states, Wisconsin reports that its judges are often reluctant to accept nonjudicial releases, surrenders or relinquishments from other states, because it is questionable at times that the child is actually free for adoption. It has been noted, for example, that information on marriages, divorces and such matters as annulment of marriages of natural parents is not submitted in a verified form. Information on a divorced father and his rights may not be included or in some instances even considered. A further reason why Wisconsin courts sometimes question nonjudicial surrenders or releases is that the word "guardian" is seldom used and the agency does not appear to be accepting permanent responsibility for the child regardless of whether an adoptive placement is made. The phrase "consent to place" is thought to be "very nebulous and it is difficult to determine the authority of the agency or whether or not the child is freed for adoption."

In summary, therefore, it seems evident that a serious impediment to completion of adoption of nonresident children is that nonjudicial relinquishment proceedings, although legal in a child's state and intended to free him for adoption, do not satisfy the courts in many other states on the issue of the child's freedom for adoption, or the right of any guardian but his parents to consent to his adoption.

Transfer or Continuation of Agency Guardianship

Somewhat related to the issue of what validates a "transfer" of the legal right to consent to an adoption is the question of the proper point for termination of the rights and responsibilities of a judicially determined guardian when the hearing in adoption is to take place in another state. For example, a court in one state has terminated the rights of natural parents and has given guardianship to an authorized agency in the same state. A home suitable for this child is found in another state and the placement is made. When an attempt is made to petition for the adoption of the child, the consent of the executive of the agency in the sending state is not acceptable, as the law in the receiving state requires that, in lieu of consent from the natural parents, the only acceptable guardianship for purposes of giving consent is guardianship of an agency licensed to place children for adoption under the laws in the state where the hearing is being held.

The petitioners have two alternatives. One would be to go to the state of the child's origin and file a petition there. (This, as already pointed out, would not be feasible if the child's state was one that restricted the filing of petitions to residents of that state.) A second alternative would be to ask the child's guardian to petition for transfer of the guardianship to the executive of a licensed agency in the receiving state. Some states report, however, that if the guardianship were held in their state this would not be possible, since the only basis to petition for discharge of guardianship would be if guardianship were being transferred to adoptive parents. Many examples were cited wherein adoptive parents were forced to return to the state of the child's origin, however far away it might be. This is costly in many ways. It is also contrary to accepted standards of good practice that whenever possible the adoption should be heard in the place of residence of the petitioners where the petitioners are known.

A troublesome combination of legal and policy provisions relating to the transfer-of-guardianship issue was reported by a number of states in respect to their dealings with New Jersey. It was alleged that it was not possible to effect a placement of a nonresident child with a New Jersey family unless: 1) the agency in the sending state became licensed as a child-placing agency in New Jersey; 2) the agency in the sending state transferred its guardianship authority to a licensed agency or the state division of public welfare in New Jersey; or, 3) the agency encouraged the New Jersey family to go to the sending state, get the child, and bring him into New Jersey, whereupon the home and placement would be viewed as an "independent placement." In the case of the third alternative, the situation surrounding the placement and the suitability of the child and family would then be investigated and the family would be charged a fee covering the costs of the investigation.

Discussion with legal and casework staff in the New Jersey State Division of Public Welfare cast further light on these requirements, which seem not only awkward, cumbersome and costly at best, but also capable of successfully blocking agreed upon and sound placement opportunities for nonresident children. It was learned that the requirement restricting authority to consent to adoptions to agencies licensed to place children in New Jersey was developed as a device giving New Jersey some measure of control over child placement by agencies based in large neighboring states such as New York or Pennsylvania. Requiring a neighboring state to go through formal application-for-license procedures may not be the best way to deal with the problem, but it makes some sense. When the other state involved is Alaska or North Dakota or Georgia, it makes less. It appeared after consultation that the problem could be ameliorated without a change in law through adding an exception provision (for agencies licensed in other states) to the regulations covering licensing of child placement agencies.

In summary it seems clear that another impediment to interstate adoption is the purely local orientation of laws and policies restricting right to consent to adoption to executives of local agencies, i.e., those licensed by that state to place within that state.

Continuing Jurisdiction

Closely related and even a part of the transfer of guardianship issue is the issue of continuing jurisdiction of the authorities in the sending state versus termination of that authority and transfer to the receiving state. This issue is illustrated in the Michigan plan for assuring socially desirable and legally incontestable adoptions for children coming into Michigan from other states. Michigan's complex plan (which also illustrates other points to be discussed later in this report) is succinctly described in a summary prepared by the Michigan State Department of Social Services for use by ARENA in informing other states of Michigan requirements. It reads as follows:

> "Initially, in references to ARENA referrals, the child and family agencies are in direct contact until they, and later the family, have agreed upon placement. At this point, a copy of the exchanged correspondence and social materials are forwarded to the Michigan State Department of Social Services for review, and henceforth all correspondence is routed through the State Office. The State Office requests the legal documents and sends out Interstate Guarantee forms.
>
> "Michigan Adoption and Related Laws require the approval of the local Probate Court and the State Department of Social Services, before children may be brought to Michigan for purposes of adoption. In order to give this approval, the legal documents as well as the social material must be at hand.
>
> "Legal documents include:
>
> (1) An original or certified copy of the child's birth certificate.
>
> (2) A certified copy of the parental relinquishment of the child to the agency for adoptive planning, or a certified copy of the Court Order terminating parental rights, or placing the child with the agency for adoption. The name of the agency person authorized to consent to adoption is also needed.
>
> "Interstate Guarantees are completed and the State Department's signature to this indicates its approval of placement.
>
> "When the legal documents, the social and medical information is at hand, the court holds a hearing on the applicant's petition. If all is in order, a consent to adoption is prepared for the agency representative's signature.
>
> "When the completed consent is returned, the agency rights are terminated and the child is made a ward of the Court for a year's supervisory period. The child may be placed at that time. Quarterly

supervisory reports are made to the Court, and copies are forwarded through the State Office, to the child's agency. When the final order to the adoption is made, a copy is requested for the child's agency.

"Should the placement fail prior to the final order, agency rights would be restored.

"Interstate guarantees remain in effect until the adoption becomes final."

One point at issue in the Michigan plan, as perceived by respondents from other states, is that it requires termination of the guardianship rights and responsibilities of the sending state before a petition is filed, before an adoption decree is granted, and even before the child leaves his state to enter Michigan. Some states believe their laws do not permit them to vacate the guardianship order except upon receipt of a final decree of adoption. Some point out that, if the placement does not work out and the child must leave the prospective adoptive home, he ceases to be a ward of the Michigan court and "guardianship with accompanying financial responsibility is restored" to the sending state by action of the Michigan court. According to some respondents, such action on the part of a Michigan court could not restore their states' guardianship status. In order to avoid this dilemma, one state reported, it simply fails to petition its own court for discharge of guardianship as required by Michigan until after the decree is made final.

The Michigan plan leads to especially difficult complications when a moving family--perhaps through ignorance of the law--brings in a child not yet adopted. At the outset the family is out of conformity with Michigan law, which requires court as well as state department approval and the filing of a petition to adopt before placement or before a child is brought into Michigan. One respondent cited an instance when the court required removal of the child to a foster home pending study of the adoptive home (already studied and approved in the other state) and the filing of a petition.

As pointed out earlier, the provisions of law and policy that are cited as obstacles by one respondent may be cited as strengths by another. The Michigan plan to terminate guardianship of the agency in the sending state was cited as a protection to a child in a case in which foster parents in the sending state sought to regain custody of a child successfully placed in Michigan with approval and assumption of wardship by the Michigan court.

In summary, an impediment to interstate adoption exists when the laws of one state make no provision for termination of guardianship except in proceedings for adoption (in which instance guardianship is transferred to adoptive parents) and the laws of another state require such termination even before adoptive placement is made.

Diversity on Questions of Who, Where and When

Data revealed many problems troubling respondents around the questions of who may place and when as well as where an adoption can become a reality. The "who" and "where" questions have already been touched upon in relation to the guardianship and consent issues. More will be said about "who may place" provisions under consideration of independent placements, as well as in relation to interstate placement guarantees. The questions on "when" troubled many respondents.

There is general agreement across the country on the principle that an interval should elapse between the time a child comes to live with a family and the time he is formally adopted by them. The Children's Bureau, Office of Child Development, recommends a year's residence, preferably, but not less than 6 months. The Child Welfare League of America recommends:

> "In general, it should be required that the child has lived in the adoptive home for a minimum of 6 months. . . before the final adoption is granted." (Section 7.32, CWLA Standards for Adoption Service, 1968)

This recommendation is not, however, consistent with another provision in these Standards (Section 4.22) that

> "the length of time between placement and legal adoption should be determined jointly in each case by the adoptive parents and the agency, and not by agency policy that sets a maximum or minimum period."

In this same section the Standards suggest:

> "If the law prohibits what is considered to be desirable practice, agencies should work to bring about changes in the law."

Wide variations were reported in the time-lapse provision in individual state laws. New Jersey law requires 12 months in contrast to Florida's requirement of 90 days. Tennessee law calls for 1 year before filing a petition and 6 months more before a final hearing. Nebraska sets the time as 6 months but recognized time spent in residence in another state. (If a Nebraska family moves to another state before the required 6 months have elapsed, it must wait the full period required in the other state. It would not have the option of journeying back to Nebraska to file, since Nebraska is one of the states that will accept petitions only from persons who have residence in Nebraska.) Missouri requires 9 months. Alabama provides for filing a petition in 3 months followed by a 6 month period before a final decree. In Colorado the petition must be filed within 30 days, although the adoption may not be completed sooner than in 6 months. Oregon sets no minimum time. Delaware requires a full year and, like most states, it allows no credit for time lived in another state.

To summarize, diversity in state adoption laws, particularly on the question of when a decree may be granted, causes delay and confusion and therefore

becomes an impediment when states that have differing provisions on this question are involved.

INTERSTATE PLACEMENT GUARANTEES

Historical Perspective

A barrier to facilitating interstate adoption was perceived by many respondents in the provisions and administration of the so-called "importation-of-children-laws" still in force in some states. This is not surprising when one considers these laws in historical perspective. The idea underlying earliest interstate placement legislation was not to facilitate but rather to prevent or restrict nonresident children from being sent or brought into a state for purposes of foster care or adoption. This was partly to protect the state against casual and undesirable placements by persons of another state. It was also to protect the state from the possibility of having to assume responsibility for support of a nonresident child. Such legislation is the child welfare counterpart of the restrictive residency laws, which later plagued the administration of the public assistance program. The bulk of these early "importation" acts were passed in the late 19th century and the first part of the 20th century before enactment of state laws requiring licensing and supervision of child placement agencies and setting forth other child care and protection powers and responsibilities of state welfare agencies. The laws enacted in this early period were largely restrictive in nature, calling for a bond as surety that the child would be removed if he should prove dependent or undesirable.

Michigan was one of the first to attempt to restrict placement of children from other states. In 1895 it required that any person, society or asylum placing children from other states file a bond with the probate judge of the county for each child brought in. In 1899, Indiana, Illinois and Minnesota passed similarly restrictive importation laws, but in these states administrative responsibility was placed with state welfare authorities. For many years these laws were regarded as models for legislation on this subject.[1]

By 1948, 34 of the states had enacted importation laws and an additional four states, which had not, specified supervision of placements of nonresident children in the laws setting forth the child care and protection powers and duties of the state public welfare agency. Only nine states in 1948 had enacted "exportation" laws attempting to give the protection of state "oversight" to children taken or sent out of the state for placement elsewhere. Obviously exportation was not seen as the taxpayer protection issue that importation was. Laws controlling exportation reflect greater emphasis on the vulnerability of children sent out of the state and a broader interpretation of a state's responsibility for all of its children.

---

[1] Material prepared by the United States Children's Bureau for presentation at an Interstate Placement Conference at Grafton, Illinois, 1947.

Many of the original restrictive (and possibly unconstitutional) residency provisions of these earlier laws remain on the books today, but the laws have been amended and supplemented in order to reflect a concern about fixing responsibility for the protection of moving children that was largely absent from the original enactments. Minnesota law, for example, still carries the archaic provision for posting a bond to be forfeited if the child "becomes a menace to the community prior to his adoption or becoming of legal age."[1] It is modified, however, to permit a "written guarantee of responsibility" in lieu of a bond. It is further supplemented to express the state's plan for assuring protection to children being sent or brought into Minnesota for purposes of adoption. The person or organization seeking to bring a child

> "shall obtain from the Commissioner (of Public Welfare) a certificate stating that the home in which the child is to be placed is, in the opinion of the Commissioner, a suitable adoptive home."

The law further assures that

> "the Commissioner is responsible for protecting the child's interests so long as he remains within the state and until he reaches the age of 21 or is legally adopted."[2]

Minnesota law also has an "exportation" provision requiring the Commissioner of Public Welfare to review and approve the plan before a child may leave Minnesota for purposes of adoption by a family in another state.[3]

Current Utility

Despite the fact that the importation laws were designed to restrict rather than to facilitate interstate placement, where they exist they do provide the framework for some valuable safeguards to children coming into the state for purposes of adoption. Such a law requires study and approval of a prospective adoptive home before a child's entry into the home. It fixes responsibility on a central administrative agency within the state for seeking facts about the child from the other state and about the suitability of the plan. It provides for supervision or surveillance of the situation until legal adoption occurs. It fixes financial responsibility on the state of the child's origin in the event the placement fails.

---

[1]Minnesota Statutes Annotated 257.05

[2]Ibid.

[3]Minnesota Statutes Annotated 257.06

Nevertheless, the requirements of these laws were perceived by some respondents as obstacles or impediments to interstate adoption. For one thing, there is confusion and irritation because the requirements vary so much from state to state, and because some states have no law at all controlling importation of children. The structure and plan for administering these laws also vary from state to state, with consequent confusion and misunderstanding about why, for example, it is necessary to route correspondence through a central state agency in one state but not in another. What appears to cause most concern are the delays, requests for further information, and the time lags in processing applications for entry into some of the states.

Administrative inflexibility and "unreasonableness" are also charged in some instances. For example, an Iowa family with whom an Iowa agency has placed a child decides to move a few miles across the state line into Missouri. The Iowa agency, through its state department of social services, notifies the state agency in Missouri of the family's intent to bring into Missouri a child not yet adopted. The Iowa agency offers to continue supervision of the home until adoption and also to assist the family to adopt through a court in Iowa. Missouri declines this offer and requires instead that the Iowa agency send several copies of the home study and all legal papers to Missouri. If Missouri finds all in order in accordance with its requirements, it will ask Iowa for a guarantee of responsibility for a 5-year period against the eventuality that the child will require service during that time period at Missouri taxpayers' expense. Missouri will not permit the Iowa agency to continue supervision of the family, but will willingly take over that responsibility. On the other hand, if the Iowa family had planned instead to move to Florida, it is possible that Florida would regretfully refuse to take over the supervisory responsibility, on the basis of staff limitations, because its law does not require supervision of placements made by agencies from other states.

In summary, the interstate placement laws <u>do</u> offer a framework for providing certain essential safeguards for children involved in interstate adoption in the states where such laws exist, have been updated through amendments, and are administered flexibly in a way that assures provision for such safeguards. Nevertheless they constitute a barrier or impediment to free movement of children across state lines because: 1) their underlying purpose is to block rather than to facilitate placement; 2) not all states have importation laws, and even fewer states have exportation laws; 3) the provisions of these laws and the regulations governing their administration are not uniform from state to state; 4) they provide for locally oriented unilateral agreements between individual states and are not binding upon all states; 5) their administration is subject to local inflexibility and unreasonableness; and, 6) there is no centralized national-level machinery for controlling or modifying such inflexibility and unreasonableness.

DIFFICULTIES RELATED TO FINANCING

As already noted, the importation laws usually attempt to fix financial responsibility on the sending state by denying responsibility of the receiving

state in the event the placement fails and the child requires public support. Except for states that have enacted the Interstate Compact on the Placement of Children, which has such a provision,[1] state laws are silent in respect to the principle of continuing financial responsibility of the sending state in the event of financial need during the period preceding legal adoption. Nevertheless it is assumed by sending states (and confirmed in the signing of interstate placement guarantees) that with continuing jurisdiction and authority to make decisions regarding plans for a child goes continuing financial responsibility. The problems of financing about which respondents expressed most distress, however, were not those related to the eventuality of a placement failure. It was rather the proper division of responsibility between the two states and the adoptive parents for costs associated with the placement process itself. Following is an example of a division-of-costs dilemma involving children who are considered hard to place because of special needs:

> "Our agency in Illinois was contacted by a local agency in California as to the placement of four Indian siblings whom they preferred to have placed in the same adoptive home. We had an approved adoptive family who had applied to adopt one Indian child, and who had four natural children. This couple, considered this placement over a period of a few weeks, and agreed to go to California to get acquainted with the siblings, ages 8, 6, 4 and 2 years. Their own children would accompany them. Transportation costs to California and return were well over $1000, not including air fare for the four adoptive children. The adoptive father does have a good income, but he would have to face immediate clothing and school costs for three of the four children. Special tutoring may also be needed for one child. We felt it was an unfair burden for the family. We finally worked it out that our agency would contribute half the transportation costs for the family, and the children's agency agreed to pay the transportation for the four adoptive children."

Respondents repeatedly reported that the matter of who will or who will not pay transportation costs for workers accompanying moving children, for children themselves, or in some instances for adoptive parents must be worked through case by case. Not only is there no generally accepted policy on this, but even agencies within a state will differ in their position. In one case reported, a family with limited financial means was eager to accept three siblings who had long awaited adoption in a distant state. Neither the children's state nor the family's state was willing or able to pay transportation costs to send the children to a family in another state. The family could not see its way clear to pay the costs and, reluctantly, was about to give up the idea of adopting children from so far away when the children's worker as a last resort drew upon her own personal funds to pay the children's transportation costs!

---

[1]See Appendix IV, Article V, Interstate Compact on the Placement of Children.

Several respondents reported that transportation costs, especially where older children are involved and preliminary visits are needed, pose such a hardship for families that it is necessary for agencies to reduce the usual adoption service fees needed to maintain the agency service.

Uneven and scattered provisions for subsidizing unusual costs also pose an obstacle to interstate adoption. For example, a family in California that adopts a hard-to-place California child may receive a subsidy under California law. However, if the family receives a hard-to-place child from another state, it is not eligible for a subsidy unless the other state also has a subsidy arrangement. A California respondent reports that this has reduced the opportunity to place children from other states. Illinois reports a similar concern. A family in Massachusetts offered a home for an Illinois child with a correctable medical condition. Had this been a Massachusetts child with this medical problem, the family would have been eligible for assistance with the medical costs. Illinois' subsidy plan, however, would not cover these particular medical costs. As it happened, the placement did not work out for other reasons, but the differences from state to state in subsidy provisions might have been the obstacle that could not be worked through.

In summary, it may be said that since most state laws and administrative policies are locally oriented and designed to deal with in-state rather than out-of-state situations, it is not surprising that there is confusion about expenditures in behalf of children involved in interstate adoption. This confusion, and the absence of nationwide expenditure policies binding on all states, is an impediment to interstate movement of children.

OTHER ADMINISTRATIVE AND PROCEDURAL PROBLEMS

Some states require that a prospective adoptive home be licensed as a foster home even if already approved by the agency as an adoptive home. There are some values in this plan for assuring continuity of agency control in the event the adoption does not take place. The way the law is administered, however, was cited as an obstacle by more than one respondent. The licensing study is not begun, one respondent asserted, until after the decision to place the child in the particular home has been made. This often means there is an unconscionably long delay before the placement can be made.

Delay, delay, and endlessly time-consuming paperwork was the underlying theme in many responses. One respondent put it this way: "Some delay is inevitable when paperwork must be processed between two state agencies, two local agencies and so many different people and organizations: courts, attorneys, social agencies, families, and even processing clerks in file rooms. It seems, however, that much of it could somehow be avoided." Avoidable delay and unnecessary paperwork are serious obstacles to interstate adoption.

CASEWORK PRACTICE OR QUALITY OF PRACTICE

Many respondents saw "lack of trust" between agencies as a basic obstacle and recommended acceptance, or greater trust, of the casework judgment or quality of practice of workers from other states. To some, however, it appeared that such trust would be "blind" and would in effect constitute abrogation of responsibility. One respondent described an experience with a single agency in another state that had received and placed several of its children. A great "sameness" was noted in the description sent of prospective homes and similarly there was a marked similarity noted in reports of progress following placement. Without exception an "excellent adjustment" was always reported. Copies of the entire home studies were then requested and were found to be so superficial that little confidence could be felt in them or in the equally superficial progress reports with the recommendations that the adoptions should be approved. In this instance the sending state reported that it had communicated with the state department of the receiving state, saying that thereafter every home study from that state must be reviewed and endorsed by the state department before being sent for consideration. The respondent reported that "this is working out so well that we are requiring the same service from all other states which wish to accept our children."

Two points are illustrated. One is the essentiality of identifying instances of poor quality of work and developing safeguards. On the other hand, extending to all states procedures set up to deal with an individual or atypical problem would seem likely to create new and unnecessary problems.

Most often reported was concern about poor quality of work in placement of older children. Frequently, according to respondents, the homes are not adequately studied. The children are not adequately prepared to make the move. And there is default on the part of the receiving state in respect to meaningful and helpful postplacement supervision. In one instance reported, the agency in the receiving state failed entirely to keep its promise of postplacement supervision and help with finalizing the adoption. The sending agency was referred to the family's attorney for information on the child's adjustment in the new home. On the other hand, it should be noted that instances of fine work and excellent cooperation from agencies in other states were also reported.

Uneven levels of practice and prevalence of substandard work constitute a serious obstacle to the mutual trust essential to facilitate interstate adoption.

IV. TOWARD SOLUTION OF SOME OF THE PROBLEMS IN INTERSTATE ADOPTION

STRENGTHENING CHILD WELFARE SERVICES IN GENERAL

Some of the problems that interfere with interstate adoption will be resolved only as child welfare services in general are strengthened and extended, state by state, so that services of uniformly high quality are available, wherever, whenever and for whomever they are needed.

The most effective deterrent to the inadequately protected "independent" placements that so complicate the problems of interstate adoption is the ready availability in every state of good social agency services--including financial help when needed with prenatal and obstetrical care costs--for all parents, married or unmarried, who are considering adoptive placement of their children.

a. A Strong Licensing Law Effectively Administered

Essential to extension of quality child welfare services, including adoption services, is a strong licensing law, effectively administered. The licensing law must give clear authority to the agency charged with the licensing responsibility for setting of minimum standards for child placement agency operations and for enforcing these standards. A good licensing program also makes provision for consultation to child placement agencies to assist them in raising their standards and in reaching uniformly desirable goals beyond the level of minimum requirements.

The licensing law should restrict child placement, including placement for adoption, to authorized agencies. It should contain clearly enforceable penalty provisions so that, when indicated, complaints may be filed with law enforcement authorities and action taken by such authorities against unauthorized persons or agencies. The laws defining children in need of protective intervention should include in the definition children for whom placement arrangements have been made in a manner contrary to law. Such a provision enables earlier review of any situation wherein a placement is contemplated or has been made in a manner contrary to law.

b. Other Essentials to Extension and Strengthening of Child Welfare Services

(1) A sound administrative structure based in law.

(2) Clear assignment of child care and protection responsibility.

(3) Policies and procedures designed to facilitate delivery of child welfare services, including services for nonresident children.

(4) Staff adequate in quantity and quality to carry out the functions assigned to them.

(5) An appropriation for child care and protection services adequate to meet need.

Given these essentials, basic to smooth, sound, interstate adoption as well as to a much-needed strengthening of child welfare services generally, state by state, additional facilitative measures seem indicated. These are needed to reduce the problems inherent in the fact that there is great, and to some extent irreducible, diversity between states: diversity in administrative structure and plan; diversity in law; and, diversity in policy and practice.

ADDITIONAL STEPS TO DEAL WITH DIVERSITY AND LOCAL AUTONOMY

The breaking down of obstacles to free movement of children in interstate adoption would seem to require that the following additional steps be taken:

a. Full Participation in the Interstate Compact

Joinder by every state (as well as by the Canadian provinces) of the Interstate Compact on the Placement of Children is essential because when universally adopted it will provide a much-needed framework on which to build a useful, nationwide administrative mechanism for facilitating placement across state lines. The Compact mechanism, which is based in law (rather than upon unilateral contractual agreements between states), enables member states to work together on interstate placement matters under jointly developed, commonly accepted--or amended--regulations. These are binding upon all members, have the force of law in each of the states, and take precedence over individual state laws or individual state policies that may be in conflict.

b. Acceptance of Principles Underlying Provisions of the Compact

Full participation of all states and provinces in Compact membership requires continentwide understanding and acceptance of the basic provisions of the Compact, including provisions regarding its

administration.[1]

> The basic impediment to the facilitation of interstate adoption is that NO ONE IS NOW IN CHARGE of regulating it on a nationwide basis. The Interstate Compact on the Placement of Children, when fully understood and administratively supported, offers a framework for centralizing authority, for resolving differences, and for dividing responsibility between participating members. Some of the problems identified in this study could be resolved if the Compact were universally adopted and fully supported. Some could not, but the Compact offers a framework for bringing all Compact administrators together to identify and work toward resolution of the interstate problem situations not yet covered by the Compact as now written.

AGREEMENT ON A UNIVERSALLY ACCEPTABLE AND LEGALLY UNASSAILABLE PROCEDURE FOR TERMINATION OF PARENTAL RIGHTS.

On no point is there greater need for reaching common agreement, at least on governing principles, than on the question of circumstances under which a child from another state may be judged by courts in the second state as incontestably "free for adoption." The question is more often posed as, "What constitutes a valid consent?". Actually, the question of possible need for reinvolving natural parents at the time of an adoption hearing in order to obtain their consent to the adoption of a child would not arise at all if the two principles long advocated by the Children's Bureau were accepted--that adoption of nonrelated children and termination of parental rights should be two separate judicial procedures, and that the termination procedure should be finalized before an adoption petition is filed.

The question of whether a nonresident child is in fact "free for adoption" would then rest solely upon evidence, satisfactory to the second state, that the parents' legal guardianship rights--including the right to consent to the child's adoption--had been terminated and that the right to give consent, along with other rights and responsibilities, had been properly conferred upon a new guardian.

With the greater emphasis in the last decade on legal protection of the rights of individuals, procedures less formal than judicial termination are increasingly open to challenge. Widely publicized contested adoption proceedings have heightened concern and have also caused the surfacing of complex legal and policy issues related to the need for fully safeguarded termination actions before adoption placements are made.

---

[1]See Appendix IV for: 1) a text of the Interstate Compact on the Placement of Children; 2) a model suggested for enabling state legislation; 3) draftsman's notes on the Compact; and 4) general comments. Secretariat services for the Interstate Compact on the Placement of Children are provided by the American Public Welfare Association, 1825 K. Street, Suite 1205, Washington, D.C. (202) 296-9142.

Despite the growing evidence supporting the need for judicial termination, separate from adoption proceedings, a majority of the states[1] still make provision for some kind of nonjudicial relinquishment. The usual provision is for a contractual arrangement between the parent and a social agency by which a parent authorizes a social agency to select adoptive parents for his child and also authorizes the agency to consent to adoption of the child by these parents. The safeguards to protect against attack upon these nonjudicial arrangements vary greatly from state to state, causing courts of many states to have strong doubts about whether a child released nonjudicially is in fact "free for adoption."

It would appear that as a first step toward incontestable and universally acceptable termination procedures, it is essential that agreement among states be reached on the minimum requirements deemed necessary by agencies and courts to achieve uniformity and, to the extent possible, to safeguard nonjudicial as well as judicial relinquishments. Some of the more obvious of such safeguards are illustrated in the description earlier in this report (page 10) of nonjudicial relinquishment procedures prescribed in California law. Most important of the California provisions is the requirement for a "formal" procedure designed to assure full opportunity for the parents to explore the meaning of the relinquishment and the alternatives open to them. There is opportunity for counseling with a qualified social worker who does not have a direct interest in arranging an adoption. There is provision for the presence of knowledgeable witnesses, and provision for filing a record of the proceedings with a responsible agency of government.

AGREEMENT ON THE CONCEPT OF THE CONTINUING AUTHORITY OF THE GUARDIAN IN THE SENDING STATE

A second major issue causing trouble and confusion between states is the question of how an agency in a sending state can best sustain and carry through its guardianship responsibilities during the period the child lives with adoptive parents in a second state, but before the child is legally adopted by the new family in the second state.

It appears that the only way incompatibility between laws of some states can be resolved is by agreement among all states on the principle that the jurisdiction of the guardian in the sending state prevail as provided in the Interstate Compact and that the designated agency in the receiving state be clearly authorized to act for the agency holding guardianship responsibility in the sending state. One major step toward accomplishment of this would be for all states to adopt the Interstate Compact on the Placement of Children[2] because

---

[1]At the last informal count several years ago, the United States Children's Bureau found only 16 states with provisions for judicially determined voluntary relinquishment or termination.

[2]See Edna Hughes, "The Interstate Compact," Child Welfare, XXXIX (April 1960), 30-31, and Harold Hagen, "The Interstate Compact on the Placement of Children," Child Welfare, XXXIX (December 1960), 11-16.

the Compact provides for continuing jurisdiction of the authorities in the sending state in all situations covered by the Compact. Whether or not there is 100% participation in the Compact, it would be well for every state to include in its provisions for custody and guardianship of children the principle that guardianship responsibility, including right to consent to a child's adoption, be maintained even in the event the child is placed in another state or moves with his adoptive family to another state before legal adoption takes place. Such provisions are operable only if the state receiving the child from another state provides, in its law, for recognizing the jurisdiction of the sending state.

AGREEMENT ON DIVISION OF RESPONSIBILITY FOR FINANCING

A third major area of difficulty is money. As indicated earlier this was most frequently expressed by respondents with respect to absence of a commonly accepted agreement on who should pay for costs of transportation to another state--transportation of children, of workers when there is need to accompany children, and, less often, of prospective adoptive parents.

The first principle on which there must be agreement among all states is that any child who is deprived, for whatever reason, of the right to grow up with his own parents in his own home has a right to expect that a suitable adoptive home will be diligently sought for him within the borders of his own state and, if one is not found for him there, it will be sought in another state regardless of the distance from where he is.

From this principle of a child's right to needed service there follows need for acceptance of the principle that responsibility must be clearly assigned in law for financing the service needed. Needed first is a commitment to provision--nationwide--of the essential child care and protection services, including adoption services. Needed second, is a commitment to assure funding commensurate with the service commitment.

Even when realistic financing of child welfare programs is achieved for all states, there will still be need for administrative clarity on a plan for division of payment responsibility when two states are involved. The principle that seems most reasonable on which to seek agreement among states is that the basic financial responsibility remains with the sending state for all needed costs, including transportation costs, until the point when legal adoption takes place. This is not to say that prospective adoptive parents who can afford to pay their own transportation costs should not be encouraged to do so. Neither is it to say that the receiving state should be reimbursed by the sending state for service costs involved in study and supervision of the placement.

The question of continuing responsibility for payment of adoption subsidies may require further consideration. If state laws made provision uniformly for adoption subsidies, it would seem sound that the continuing financial responsibility for the subsidy be transferred from the sending state to the receiving state after legal adoption takes place. Until every state has a

provision for subsidizing adoptive homes, however, the principles of continuing responsibility of the sending state for payment of the subsidy--even after adoption--should prevail and should be written into all subsidy laws.

AGREEMENT ON WAITING PERIOD BEFORE THE FINAL DECREE OF ADOPTION

In the case of adoptive families moving from one state to another between the time a child is placed with a family and the completion of the adoption, recurrent problems arise because of differences among the states with regard to the time when a petition is to be filed, and, after it is filed, the waiting period required before a final decree of adoption may be entered. Both the Children's Bureau and the Child Welfare League of America suggest, as a minimum, a 6-month waiting period following the filing of a petition to adopt. It would be desirable of course if adoption laws in all states met this standard uniformly. So long as differences exist, however, agreement should be sought that the waiting period prescribed in the state where the petition is filed prevail. The time spent in residence with the adoptive family in the first state should be recognized if the supervising agency in the first state so recommends.

AGREEMENT ON PROVISIONS OF THE REVISED UNIFORM ADOPTION ACT

As has been shown, diversity between states complicates interstate placement for adoption. Differences from state to state in the substantive provisions of the adoption law itself appear to be less of a problem than differences in other related laws, policies and practices, and less of a problem than the absence of a law, mandatory upon all states, to facilitate and control interstate placement. Nevertheless the move toward developing a uniform adoption act is sound and should be encouraged. It appears, however, that the Revised Uniform Adoption Act, drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association at its meetings at Atlanta in 1970 and at New Orleans in 1972, cannot be heartily endorsed as it now stands.

It includes some provisions on which there is great difference of opinion and in some instances grave concern. It is imperative that these differences be fully aired and resolved if possible, so that the Uniform Act may be enthusiastically supported by all concerned groups. In the light of findings of this study, a major substantive liability noted in the Act as it now stands is that it includes termination of parental rights' proceedings as part of the adoption act. This study strongly reaffirms the principle that termination proceedings should precede adoption placement and should be separate from proceedings in adoption.

V. SUMMARY AND CONCLUSIONS

In this study and report we have attempted to document the many obstacles in law, policy and administrative procedure that seriously interfere with effecting adoptions across state lines. The major problems may be summarized as follows:

1. Nonjudicial termination or relinquishment proceedings, although legal in many states and believed by such states to free children for adoption, do not satisfy the courts in other states on the issue of the child's freedom for adoption or on th ight of any guardian but his natural parents to consent to his option.

2. A second impediment to interstate adoption is the purely local orientation of laws and policies restricting right to consent to adoption to executives of local agencies, i.e., those licensed by a specific state to place children within that state.

3. A third obstacle (arising like the first two from diversity in state law and practice) exists when the laws of one state make no provision for termination of guardianship except in proceedings for adoption, and the laws of another state require such termination even before adoptive placement is made.

4. Diversity in state adoption laws on the question of when a decree may be granted causes delay and confusion when states that have differing provisions on this question are involved.

5. Despite the fact that the "importation (and exportation) of children" laws, in the states where they exist, do offer a framework for providing essential safeguards, nevertheless they constitute a barrier or impediment to interstate adoption for the following reasons:

   (1) The original purpose, which was to block rather than to facilitate movement of children across state lines, is still the underlying thrust of these laws.

   (2) Not all states have importation of children laws and few have laws governing exportation.

   (3) The provisions of these laws and the regulations governing their administration are not uniform from state to state.

(4) They provide for locally oriented unilateral agreements between individual states and are not binding upon all states.

(5) Their administration is subject to local inflexibility and unreasonableness and there is no centralized, national-level machinery for controlling or modifying such inflexibility and unreasonableness.

6. Financing costs of interstate adoption is a problem. Most state laws and administrative policies are locally oriented and therefore do not contemplate or provide for the possibility of expenditures on behalf of children outside the state's borders. For this reason it is not surprising that there is confusion about expenditures on behalf of children involved in interstate adoption. This confusion and the absence of interstate adoption expenditure policies binding on all states are impediments to interstate adoption.

7. Delay, some but not all of which could be avoided, and unnecessary paperwork are serious obstacles to interstate adoption.

8. Uneven levels of practice and prevalence of substandard work constitute a serious obstacle to the mutual "trust" essential to facilitate interstate adoption.

In this report we have also attempted to identify areas wherein efforts toward solution must be concentrated. First seen among these is the need for strengthening and extending child welfare services generally, so that services of uniformly high quality are available wherever, whenever and for whomever they are needed. Essentials seen for achieving this goal in every locality include: a sound administrative structure, based in law; clear assignment of child care and protection responsibility; policies and procedures designed to facilitate delivery of child welfare services, including services for nonresident or moving children; staff adequate in quantity and quality to carry out the functions assigned to them; and, an appropriation for child care and protection services adequate to meet need.

Need was also seen for special concentration on strengthening of the child welfare licensing function in every state, because the licensing of child placement agencies was viewed as an essential tool for building and maintaining good standards of agency practice in every locality. Licensing was also seen as an essential tool for restricting child placement to authorized agencies.

The study isolated several other specific points or areas for needed concentration of effort if we are to bring order out of the chaos. These points or recommended areas for concentration of effort are:

1. Influential persons in all states and provinces must be made aware of the provisions and potentialities of the Interstate Compact on

the Placement of Children and must come to agreement on the principles underlying the Compact's provisions.

2. Legislative bodies in states not yet in Compact membership must be persuaded to pass enabling legislation to make joinder possible.

3. Agreement must be reached among judges, lawyers and social workers on a universally acceptable and legally unassailable procedure for termination of parental rights.

4. Agreement must be reached on the concept of continuing authority of the guardian in the sending state.

5. Agreement must be reached on the division of responsibility for financing of the costs involved in interstate adoption.

6. Agreement must be reached on the waiting period that should prevail when there is difference on this point from state to state.

7. Agreement must be reached on the provisions of the Revised Uniform Adoption Act so that it can be more universally supported.

Efforts have been made by various organizations to deal with the problems documented. The Child Welfare League of America, for example, in all its activities but particularly in its published standards, has sought to raise and unify the level of child welfare practice, including the level of practice in interstate adoption. The establishment of ARENA and ARENA's attempts to unify practice and to work out conflicts among the laws and policies of participating states are thrusts toward solution. Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children (also known as the Model Adoption Act), developed and supported by the Children's Bureau, is another example of effort to solve interstate adoption problems. The Interstate Compact on the Placement of Children, developed by the Council of State Governments, and for which the American Public Welfare Association provides secretariat service, is the effort most specifically directed toward facilitating interstate adoption.[1] The Revised Uniform Adoption Law, proposed by the National Conference of Commissioners on Uniform State Laws and supported by the American Bar Association, is another example of an effort to facilitate adoption including interstate adoption.

The principles incorporated in these different sets of standards and proposed legal provisions are not in all instances compatible with each other. Nor does any one of these guides constitute a sufficiently comprehensive instrument to deal with all facets of the problem. It seems clear that there must

---

[1]In 1972 the Office of Child Development, HEW, granted funds to the American Public Welfare Association for a project to promote full participation in the Compact.

be agreement on the principles desirable in interstate adoption and on a plan of action toward implementation of these principles.

A first step in any plan of action would seem to be a review of the proposed principles and identified conflict areas, or areas demanding attention, by the organizations and agencies most deeply concerned, and joint work to arrive at resolution of the differences. Wherever appropriate, the agreed-upon principles could be incorporated in regulations governing administration of the Interstate Compact at the same time that educational efforts are proceeding to enlist additional states and provinces in Compact membership.

If any action is to occur as a consequence of this study, someone must be in charge. In other words, it is incumbent upon the American Public Welfare Association (APWA), the Adoption Resource Exchange of North America (ARENA), the Child Welfare League of America (CWLA), or the Office of Child Development (OCD) to assume responsibility for developing and giving leadership to a plan of action in which all concerned agencies or groups would be invited to participate to the end that long-standing barriers to interstate adoption may finally be removed.

APPENDIX I

CHILD WELFARE LEAGUE OF AMERICA, INC.

67 IRVING PLACE • NEW YORK, N. Y. 10003 • (212) 254-7410

October 4, 1971

To: State Directors of Social Services for Children

From: Roberta Hunt, Project Director

Re: Laws and Policies Affecting Interstate Adoption

The Child Welfare League of America has received a grant from the Office of Child Development in the U.S. Department of Health, Education and Welfare for a project to explore the barriers to interstate adoption and ways to overcome them.

The proposal grew out of the experience of ARENA (Adoption Resource Exchange of North America) in trying to facilitate adoption of children across state lines. Although a small number of states have adopted the Interstate Compact on Placement of Children and thus have reciprocal provisions, the laws of many states are believed to include provisions that are not compatible with those of other states. Furthermore, variations in administrative policies and procedures may impede interstate adoption even where formal legal barriers are not present. It is important to identify the recurrent provisions in law and policy that appear to interfere with interstate adoption so that effort can be focused on achieving the modifications that would have the most beneficial effects.

We need your help in identifying specific problems that have arisen so that we can analyze the laws and the manuals of policy and procedure with these in mind. Will you please ask your staff to try to recall their experience with interstate placement within the last few years and to tell us about instances where a legal or policy requirement of another state appeared to pose problems, to cause unwarranted delay, or to be different from requirements in your own state? Do problems tend to arise primarily when you are trying to arrange adoption within your state for children from elsewhere? Or do you also recall problems when adoption was being arranged for children from your state with families in another state? Do the problems as you see them most often appear to be around questions of continuing jurisdiction? Termination of parental rights? Financial responsibility -- long term as well as immediate costs as for transportation, etc? Transfer of custody? Administrative structure? Casework judgment or practice? Other?

Please be as specific as possible. If a problem you cite is illustrated by a case handled through ARENA, note the case name so that we may refer to the record for further information. We would welcome your opinion about the kinds of changes in law or policy that would obviate the problems you have encountered.

Since yours is the State agency, we are also asking you to be sure that we have current excerpts from your law, as well as up-to-date policy statements and manuals of procedure relating to adoption, termination of parental rights and importation or exportation of children for foster care and adoption. In our library we have

It would be very helpful if we could be sure of a response from you before October 20, 1971. A form is enclosed for your convenience in answering. Your help is deeply appreciated.

RH:mk

APPENDIX II

Please return to CWLA Research Center, 67 Irving Place, New York, N.Y.10003 by October 20, 1971.

Impediments to Interstate Adoption

Agency _____ City _____ State _____

1. Arranging Adoption of Children from Other States (Cite case illustrations, if possible)

   A. Legal obstacles

   B. Policy obstacles

   C. Other

2. Arranging Adoption in Other States (Cite case illustrations, if possible)

   A. Legal obstacles

   B. Policy obstacles

   C. Other

3. What kinds of changes would you recommend?

4. Anticipated volume of interstate adoptions.

Increase _____ Decrease _____ No change _____

If increase or decrease is anticipated, why?

5. Recommendations you would like to see come out of this study other than specific policy and legal changes noted in '3'.

Signed _____

Title _____

Date _____

APPENDIX III

CHILD WELFARE LEAGUE OF AMERICA, INC.
67 IRVING PLACE • NEW YORK, N. Y. 10003 • (212) 254-7410

October 4, 1971

To: Executives of Agencies That Have Used ARENA

From: Roberta Hunt, Project Director

Re: Laws and Policies Affecting Interstate Adoption

The Child Welfare League of America has received a grant from the Office of Child Development in the U.S. Department of Health, Education and Welfare for a project to explore the barriers to interstate adoption and ways to overcome them.

The proposal grew out of the experience of ARENA (Adoption Resource Exchange of North America) in trying to facilitate adoption of children across state lines. Although a small number of states have adopted the Interstate Compact on Placement of Children and thus have reciprocal provisions, the laws of many states are believed to include provisions that are not compatible with those of other states. Furthermore, variations in administrative policies and procedures may impede interstate adoption even where formal legal barriers are not present. It is important to identify the recurrent provisions in law and policy that appear to interfere with interstate adoption so that effort can be focused on achieving the modifications that would have the most beneficial effects.

We need your help in identifying specific problems that have arisen so that we can analyze the laws and the manuals of policy and procedure with these in mind. Will you please ask your staff to try to recall their experience with interstate placement within the last few years and to tell us about instances where a legal or policy requirement of another state appeared to pose problems, to cause unwarranted delay, or to be different from requirements in your own state? Do problems tend to arise primarily when you are trying to arrange adoption within your state for children from elsewhere? Or do you also recall problems when adoption was being arranged for children from your state with families in another state? Do the problems as you see them most often appear to be around questions of continuing jurisdiction? Termination of parental rights? Financial responsibility -- long term as well as immediate costs as for transportation, etc.? Transfer of custody? Administrative structure? Casework judgment or practice? Other?

Please be as specific as possible. If a problem you cite is illustrated by a case handled through ARENA, note the case name so that we may refer to the record for further information. We would welcome your opinion about the kinds of changes in law or policy that would obviate the problems you have encountered.

It would be very helpful if we could be sure of a response from you before October 20, 1971. A form is enclosed for your convenience in answering. Your help is deeply appreciated.

APPENDIX IV -- Part 1.

Text of Interstate Compact on the Placement of Children

ARTICLE I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement

The sending, bringing or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

APPENDIX IV -- Part 2.

State Enabling Legislation

Following is the draft of an enabling act. Its purpose is to put the compact into effect and to relate its provisions to the organizational structure and operating procedure of the ratifying state. To accomplish this purpose, the language of the enabling act must vary from state to state.

In contrast, the language of the compact proper - as distinguished from the enabling act - should be adopted verbatim by all ratifying states so that possible legal difficulties may be avoided.

Detailed "draftsman's notes" explaining the provisions of the compact, article by article, follow the text of the compact.

Suggested Draft for Enabling Act

/Title should conform to state requirements./

(Be it enacted, etc.)

Section 1. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

Interstate Compact on the Placement of Children

/At this point insert the exact text of the compact as shown following this suggested act./

Section 2. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of /State laws fixing responsibility for the support of children/ also may be invoked.

Section 3. The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the /insert name of appropriate state agency/ and said /agency/ shall receive and act with reference to notices required by said Article III. /Add such additional enforcement provisions as may be necessary./

Section 4. As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the /insert name of appropriate official or agency./

APPENDIX IV -- Part 2.

Section 5. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the [chief state fiscal officer] in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

Section 6. Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under [cite appropriate provisions of statute] shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

Section 7. The provisions of [cite statutes restricting out-of-state placement] shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

Section 8. Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

Section 9. As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the [Governor]. The [Governor] is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

Section 10. [Insert effective date.]

APPENDIX IV -- Part 3.

Draftsman's Notes

Upon recommendation by the Committee of State Officials on Suggested State Legislation, the following memorandum containing draftsman's notes for the Interstate Compact on the Placement of Children has been prepared. This article-by-article commentary on the Compact will serve as a record of some of the considerations which entered into the language incorporated in the Compact's several provisions pursuant to the action of groups cooperating in its formulation. The Compact appears in Suggested State Legislation -- Program for 1961. The memorandum was prepared by Dr. Mitchell Wendell, Research Consultant to the New York Joint Legislative Committee on Interstate Cooperation.

ARTICLE I

This article performs the standard function of statutory declarations of policy and findings. It is intended as an aid in construction and as an introduction to the subject matter of the Compact.

This article, and the first sentence of Article X make it clear that the Compact is remedial and protective legislation and is to be liberally construed.

ARTICLE II

Some comments may be made with respect to the definitions contained in this article, as follows:

(a) This definition of child is meant to exclude emancipated minors. This is the effect of the words ". . . subject to parental . . . control."

(b) The defini on of "sending agency" is especially important because it makes it clear that the Compact applies to placements made by either public or private agencies or persons. However, this definition is to be read in conjunction with Article VIII which exempts certain close relatives. This was done in order to protect the social and legal rights of the family and because it is recognized that regulation is desirable only in the absence of adequate family control or in order to forestall conditions which might produce an absence of such control.

(c) This definition also makes it clear that coverage of both public and private agencies and persons is intended.

(d) On the whole, the term "foster care" has an established meaning in welfare circles sufficient to indicate a relation of some duration as an integral part of the child rearing process. A problem was encountered in connection with the multitude of personal and institutional arrangements which exist to serve temporary and specific functions. Since the Compact is conceived as an instrument for handling the general environmental problems of upbringing, rather than specific and specialized mental, medical, and educational services, the definition of "placement" specifically excludes such activities. Of course, the need for such services can develop in or accompany any child rearing process and the Compact does not prevent their being furnished. However, if such services are the primary purpose of the "sending or bringing" of the child, it is not a "placement" within the meaning of the Compact.

A problem of greater difficulty is posed by vacation camps and by the temporary deposit of a child with friends for recreational or similar social purposes. It was not believed practicable to attempt to draft language that would draw the line between such limited custodial arrangements and "placement" in the true sense. The problems connected with writing legislation that would validly distinguish between a stay that was just long enough, and one that was not quite long enough, were of a type to suggest that specific phraseology in the definition would create more problems than it would solve. However, it is the clear intent to exclude such temporary arrangements for limited special purposes.

A few, highly specialized institutions for the care of problem children also pose problems of definition. They provide care of the general child rearing type, combined with educational programs and attention to mental or physical problems. They may defy simple description as "homes", "hospitals", or "schools". Moreover, the very individualized nature of the services which they provide make many of them unique. Consequently, every party state, in its administration of the Compact, will have to make its own determinations in respect of the coverage of such institutions. However, assuming only an ordinary degree of common sense administration, inequities should not develop. In any event, admission to institutions of this character is attended with enough forethought and formality so that the relatively simple requirements of notice and investigation under the Compact should raise no problem.

ARTICLE III

The principal purpose of this article is to provide for the furnishing of information on the basis of which determinations can be made with respect to the suitability of a placement. While the Compact covers placements by both public and private persons and agencies, the authorities which are empowered to respond to notices sent pursuant to this article by making findings that the placement "does not appear to be contrary to the interests of the child" is limited to public authorities. The form of the determination which the public authorities are required to make before a placement can be legally made is worthy of special note. These authorities are not required to make an affirmative finding that the proposed placement is in the best interests of the child. In many situations this might impose too severean obligation on welfare agencies with heavy case loads, or might require unreasonable delays. However, the administration of the article does presuppose, and is meant to furnish the ingredients necessary for, reasonable investigation of the environment and circumstances of a proposed placement before it is made. If the public authorities find positive reason to believe that the placement would be contrary to the interests of the child, they are empowered to prevent the placement by withholding their written notification.

ARTICLE IV

The feature of this article which invites comment is the making of "sending, bringing, or causing to be sent or brought" in violation of the terms of the Compact subject to penalty in either the jurisdiction of origin or the receiving state. It is clear that a given course of conduct can be

made punishable in more than one jurisdiction. Jerome v. U.S., 318 U.S. 101 (1943); U.S. v. Lanza, 260 U.S. 377 (1922). Cf. Morgan v. Devine, 237 U.S. 632 (1915). See Carter v. McClaughry, 183 U.S. 365 (1902); Albrecht v. U.S., 273 U.S. 1 (1927). These cases also support the well established proposition that different parts of a single transaction may be regarded as separate offences. Consequently one state might make it an offense to send the child out of the state in violation of the Compact, while the "receiving state" might make it an offense to bring the child into the state in violation of the Compact. The practical utility of this arrangement is to make it easier for enforcement to be had by permitting an offender to be reached in either state where he may be found.

ARTICLE V

This article provides for the jurisdictional arrangements necessary to preserve legal responsibilities with respect to children placed out of state. A number of states already have unilateral interstate child placement laws. Under them, the control of the state of origin ends once the child has left its territorial jurisdiction. On the other hand, there is no way that a receiving state can enforce responsibilities on either public or private persons or agencies in such a state or origin, unless jurisdiction over the would-be defendant can be obtained. As a practical matter, this is primarily a problem with respect to irresponsible private persons. The Compact provides a means of asserting the requisite jurisdiction within all party states. It also gives a receiving state assurance that sending agencies will not abandon the responsibilities which rightfully belong to them in interstate placements initiated by then and that there will be recourse in the case of such default.

The legal principles underlying paragraph (a) of the article are similar to those already familiar in the Interstate Compact for the Supervision of Parolees and Probationers and the Interstate Compact on Juveniles. The ability of a sending state to retain jurisdiction sufficient to control his activities, and even compel his return, often has been litigated under the former Compact. For a detailed discussion of the subject and citation of authorities, see "Handbook on Interstate Crime Control," Council of State Governments.

Paragraphs (b) and (c) provide for administrative flexibility necessary to make the system practicable in many of the situations of interstate placement. They make possible the establishment of agency relationships between the relevant entities in the state of origin and the receiving state. The relationship between public authorities envisaged in paragraph (b) is legally of the same kind already familiar for both adult and juvenile parole and probation supervision under the two Compacts mentioned above. On the other hand, it may not be possible to confer a similar degree of authority on private persons or agencies, especially in respect of any relief from liability for nonperformance or improper performance. Consequently, paragraph (c) makes it clear that agency arrangements are possible in the case of private placements, but it also provides that such transfers of responsibility for performance of supervision and care do not abrogate the legal responsibilities set forth in paragraph (a) of the article.

ARTICLE VI

This is the only article of the Compact dealing with children who are under adjudication. It is meant for special situations in which there may be no suitable facilities available in the state of origin but where there may be such facilities, either public or private, in other party states. The legal basis for such out-of-state treatment of persons under adjudication is similar to that for out-of-state parole and probation supervision. Institutionalization is merely a different degree of restraint of liberty than conditional release. Conditional release can be replaced by institutionalization at the option of the adjudicating authority at any time before the expiration of the adjudicatory period. In the case of juveniles, the legal inhibitions imposed by the Due Process Clause of the Fourteenth Amendment to the Federal Constitution are not as compelling because the juvenile is subject to legal disabilities an account of his minority. Nevertheless policy considerations make it desirable that the rights of the juvenile and his parents or guardian be fully recognized and protected. Consequently, the article requires a court hearing and finding that institutionalization in another party state is proper and that equivalent facilities are not available within the state of origin. (Ed. note: Recent court decisions have further strengthened the rights of juveniles.)

The Interstate Compact on Juveniles (Article X) which has been adopted by over half the states contemplates a similar arrangement for interstate institutionalization of delinquents or other problem children. However, its application in this regard would require the negotiation of administrative agreements. More important as a point of difference, the Interstate Compact on Juveniles is not applicable to the use of private facilities in a direct manner. Article VI of the present Compact is designed to reach this source of possible institutional care as well as public facilities.

Yet another analogy to Article VI is found in the recently enacted Western Interstate Corrections Compact (now adopted by nine Western States). It provides machinery for the incarceration in other party states of persons under sentence for crime. The older Out of State Incarceration Amendment to the Interstate Compact for the Supervision of Parolees and Probationers has some of the same elements. While these Compacts are decidedly in point in providing illustrations of similar jurisdictional principles, it should be pointed out that the Interstate Compact on the Placement of Children is basically welfare legislation and, even in regard to juvenile delinquents, the treatment is not regarded as criminal corrections.

ARTICLES VII-X

These remaining articles are standard Compact provisions which have their counterparts in many Compacts and raise no special problems. One provision of Article IX requires a special mention. The Compact is open to the Government of Canada or a province thereof, if Congress consents. As an agreement purely among states, the Interstate Compact on the Placement of Children needs no consent from Congress to become effective. The leading case on this subject is Virginia v. Tennessee, 148 U.S. 503 (1893). Only those Compacts require the Congressional consent which affect the "political balance" of the federal

system or affect a power delegated to the national government. Since the Interstate Compact on the Placement of Children deals only with social welfare matters entrusted by the Constitution to the states, if does not fall within the class of Compact requiring such consent. Indeed it might be possible to make a similar argument, even with respect to participation by Canada. However, the Compact does not go this far. It provides for Canadian participation only if Congress consents thereto.

APPENDIX IV -- Part 4.

General Comments

(Note: These comments are reproduced from "Suggested State Legislation -- Program for 1961," published by the Council of State Governments.)

The Interstate Compact on the Placement of Children was developed by the New York State Joint Legislative Committee on Interstate Cooperation. The final draft of the compact was approved by a twelve-state conference held in January, 1960, and two months later New York became the first state to ratify the compact.

The compact provides procedures for the interstate placement of children (either by public agencies or by private persons or agencies) when such placement is for foster care or as a preliminary to a possible adoption. As indicated below, the compact also provides for placement of delinquents in institutions.

At the present time, laws relating to interstate placement are inadequate or nonexistent. A number of states have interstate placement statutes, but they have been enacted unilaterally. Consequently, supervision of the out-of state source from which a child may be sent into the jurisdiction is difficult or impossible. When the state having a placement law is the originating point for the child, no legally binding control may be exercised once the placement has been made, unless a really bad situation develops in the other state, is discovered by its welfare authorities, and is treated as a new case needing corrective action on a wholly local basis. Some states, either with or without interstate placement laws, have informal arrangements for courtesy supervision of homes in which interstate placements are made. However, the state of origin loses jurisdiction over the child once it has left the state and, if the voluntary arrangements break down or are resisted, undesirable situations can develop.

The Interstate Compact on the Placement of Children is designed to overcome the inadequacies just described. It provides for:

1. Notification of appropriate state of local public welfare authorities in the state of intended destination prior to the placement made by out-of-state public and private agencies and persons, other than close relatives of the child making a placement with other close relatives.

2. An opportunity for welfare officials in the state of intended destination to investigate the proposed placement. No child from one party state could be placed in another party state prior to written notification that the placement did not appear to violate the interests of the child.

3. Placement of delinquent children for institutional care in another state if no equivalent facilities for them are available in the state from which they were being sent and if a court hearing, with opportunity for the parents to be heard, revealed that there would be no undue hardship.

APPENDIX IV -- Part 4.

The Interstate Compact on Juveniles, to which over half of the states are already party (Ed. note: By 1968 the Compact on Juveniles had been ratified by 46 states.), provides for sending delinquents to other states, but only on probation or parole. Supplementary agreements under the compact might conceivably provide for institutional care in another state, but no such agreements have been concluded. In any event, they could apply only to public institutions. The more significant possibility for out-of-state institutional care of delinquents seems to be in private charitable institutions operated under religious and other auspices. The Interstate Compact on the Placement of Children would make it possible to take advantage of such facilities.

4. Provision is made for the continuance of responsibility for the child on the part of the agency or person sending him, but it would also be possible to make agreements with agencies in the receiving state for cooperative supervision or discharge of these responsibilities.

The compact will increase the opportunities for the making of good placements by broadening the geographic area within which they could be made with proper safeguards. It would reach at least a part of the black and grey market by requiring information and investigation prior to placement and by providing means for the punishment of unauthorized placements.